

MDM Declaration Exhibit A-14

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,
Plaintiffs,
vs. No. 18 Civ. 2949 (ARR) (RER)
XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,
Defendants.

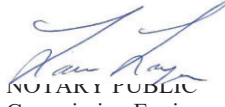
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VIDEOTAPED DEPOSITION OF
SEABRON ADAMSON
Tuesday, November 8, 2022
10:06 a.m.
Veritext
101 Arch Street
Boston, Massachusetts 02110

Laurie K. Langer, RPR

<p>1 APPEARANCES</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFF(s):</p> <p>4 BY: Steven L. Wittels, Esq.</p> <p>5 Ethan D. Roman, Esq. (appeared via Zoom.)</p> <p>6 Steven D. Cohen, Esq. (appeared via Zoom.)</p> <p>7 WITTELS MCINTURFF PALIKOVIC</p> <p>8 18 Half Mile Road</p> <p>9 Armonk, New York 10504</p> <p>10 (914) 319-9945</p> <p>11 slw@wittelslaw.com</p> <p>12</p> <p>13 ON BEHALF OF THE DEFENDANT(s):</p> <p>14 BY: Michael D. "Matt" Matthews, Jr., Esq.</p> <p>15 MCDOWELL HETHERINGTON LLP</p> <p>16 1001 Fannin Street, Suite 2700</p> <p>17 Houston, Texas 77002</p> <p>18 (713) 337-5580</p> <p>19 matt.matthews@mhlhp.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 David C. Coleman</p> <p>23 Shawn Budd, Videographer</p> <p>24</p> <p style="text-align: right;">Page 2</p>	<p>1 PROCEEDINGS</p> <p>2</p> <p>3 VIDEOGRAPHER: Okay. We are on the record.</p> <p>4 This is the videographer speaking Shawn Budd with</p> <p>5 Veritext Legal Solutions. Today's date is November 8th,</p> <p>6 2022 and the time is 10:06 a.m.</p> <p>7 We are here in Boston, Massachusetts to take</p> <p>8 the video deposition of Seabron Adamson in the matter of</p> <p>9 Susanna Mirkin, et al, versus XOOM-Energy in New York,</p> <p>10 LLC.</p> <p>11 Will counsel please introduce themselves for</p> <p>12 the record.</p> <p>13 MR. WITTELS: Steven Wittels. Wittels</p> <p>14 McInturff and Palikovic for the Plaintiffs and the</p> <p>15 proposed class on behalf of the witness today,</p> <p>16 Mr. Adamson.</p> <p>17 Appearing by video are also for the</p> <p>18 Plaintiffs in the proposed class Steven Cohen and Ethan</p> <p>19 Roman.</p> <p>20 MR. MATTHEWS: My name is Matt Matthews, I'm</p> <p>21 with the law firm of McDowell Hetherington and I</p> <p>22 represent the Defendants XOOM Energy.</p> <p>23 Also with me here today is David Coleman of</p> <p>24 the NorthBridge Group who is, has been designated as a</p> <p style="text-align: right;">Page 4</p>
<p>1 INDEX OF EXAMINATION</p> <p>2</p> <p>3 WITNESS: Seabron Adamson</p> <p>4 EXAMINATION PAGE NO.</p> <p>5 By Mr. Matthews 5</p> <p>6 By Mr. Wittels 138</p> <p>7</p> <p>8 INDEX TO EXHIBITS</p> <p>9 NO. DESCRIPTION PAGE NO.</p> <p>10 Exhibit 1 Expert Report of Derya 8</p> <p>11 Eryilmaz and Seabron Adamson</p> <p>12 Exhibit 2 Electricity Sales Agreement 12</p> <p>13 Exhibit 3 Expert Report of David C. 47</p> <p>14 Coleman</p> <p>15 Exhibit 4 Rebuttal Report of David C. 48</p> <p>16 Coleman</p> <p>17 Exhibit 5 First Amended Class Action 113</p> <p>18 Complaint</p> <p>19 Exhibit 6 Market Supply Cost Build Up 114</p> <p>20</p> <p>21 (Original exhibits attached to original transcript)</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">Page 3</p>	<p>1 testifying expert for XOOM.</p> <p>2 VIDEOGRAPHER: The court reporter today is</p> <p>3 Laurie Langer. Will you please swear in the witness.</p> <p>4</p> <p>5</p> <p>6 SEABRON ADAMSON,</p> <p>7 having been satisfactorily identified by the production</p> <p>8 of his driver's license, and duly sworn by the Notary</p> <p>9 Public, was examined and testified as follows:</p> <p>10</p> <p>11</p> <p>12 EXAMINATION</p> <p>13</p> <p>14 BY MR. MATTHEWS:</p> <p>15 Q. Good morning, Mr. Adamson. How are you?</p> <p>16 A. Good morning.</p> <p>17 Q. Thank you for being here today. Before we jump</p> <p>18 in, I'll quickly go over ground rules. I know you've</p> <p>19 been deposed before, --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- I'm sure you're familiar with them. But this</p> <p>22 is not meant to be any sort of endurance test, anytime</p> <p>23 you need a break just let me know, we can take a break.</p> <p>24 With, you know, the same qualification you always</p> <p style="text-align: right;">Page 5</p>

<p>1 case real quick. In that case you were not offering a</p> <p>2 legal interpretation of what the contract language</p> <p>3 meant; right?</p> <p>4 A. No, I would not have offered a legal</p> <p>5 interpretation.</p> <p>6 Q. And your interpretation of XOOM's contract</p> <p>7 language here is similarly constrained. You -- in the</p> <p>8 sense that you are not offering a legal interpretation</p> <p>9 here, either?</p> <p>10 MR. WITTELS: Objection.</p> <p>11 Q. Right?</p> <p>12 A. Yeah, I'm not offering a legal opinion, I think</p> <p>13 as we discussed, yes.</p> <p>14 Q. Not to any greater degree than you did in the</p> <p>15 Richards case?</p> <p>16 A. No. Just not offering a legal opinion.</p> <p>17 Q. Okay. Look if you would at Exhibit 2, which is</p> <p>18 the sales agreement.</p> <p>19 A. Yep.</p> <p>20 Q. And you directed me to -- we talked about the</p> <p>21 key, the critical --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- rate setting provision earlier. And then you</p> <p>24 directed me to a couple of others that you looked at,</p> <p style="text-align: right;">Page 102</p>	<p>1 charges are also discussed at the rate setting --</p> <p>2 Q. Okay.</p> <p>3 A. -- thing, just if you read the last sentence. I</p> <p>4 think what I was pointing to, just to cut the -- was --</p> <p>5 there were things that came up was, it's under the title</p> <p>6 thing. And it says, "delivered to a location considered</p> <p>7 the point of delivery," you know, I was just commenting</p> <p>8 that point of delivery obviously depends for a customer,</p> <p>9 depending on what utility serves them in the state.</p> <p>10 Q. Okay. Got it. Do you see the provision right</p> <p>11 above that, the agency provision?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Do you see the last sentence of that section,</p> <p>14 "these services are provided on an arm's length basis</p> <p>15 and market-based compensation is included in the price</p> <p>16 noted above."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. What does that sentence mean to you?</p> <p>20 A. "These services are provided on an arm's length</p> <p>21 basis and market-based compensation is included in the</p> <p>22 price noted above." Well, where it says they have</p> <p>23 energy, they have transportation, those of the LDU, the</p> <p>24 transmission facilities and LDU have compensation that's</p> <p style="text-align: right;">Page 104</p>
<p>1 one being the price section.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you remember that?</p> <p>4 A. Yes.</p> <p>5 Q. And then -- I'm not sure where it appears, but</p> <p>6 you also pointed me to a provision about delivery</p> <p>7 charges; do you remember that?</p> <p>8 MR. WITTELS: What -- what's the question</p> <p>9 here that you're asking him, Matt? I mean, what are you</p> <p>10 asking?</p> <p>11 A. Sorry. Can you repeat.</p> <p>12 Q. So you -- when I asked you earlier about your</p> <p>13 interpretation of this contract, or your review of</p> <p>14 it, --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- let's say, you -- you mentioned the rate</p> <p>17 setting provision that's at the top of the table; yes?</p> <p>18 A. Uh-huh. Yes.</p> <p>19 Q. And you mentioned the price section at the bottom</p> <p>20 of page 1; yes?</p> <p>21 A. Yes.</p> <p>22 Q. And then you also mentioned some provision</p> <p>23 related to delivery charges.</p> <p>24 A. Well, delivery charges, like, utility delivery</p> <p style="text-align: right;">Page 103</p>	<p>1 market based.</p> <p>2 Q. Okay. Do -- do you have any opinion about what</p> <p>3 the price noted above refers to?</p> <p>4 A. In the -- in the price noted above and the price</p> <p>5 related to the arranging for and contracting</p> <p>6 transportation, that's one possibility. No, I don't</p> <p>7 have an express opinion about that.</p> <p>8 Q. Okay. Fair enough. So this agency section in</p> <p>9 that sentence specifically are not something that you</p> <p>10 considered in connection with your evaluation of whether</p> <p>11 or not XOOM set its rates consistent with the terms of</p> <p>12 the sales agreement?</p> <p>13 A. No. This seems to be referencing to</p> <p>14 you -- they're specifically allowed to buy the energy</p> <p>15 and arrange it through the transmission and LDU systems.</p> <p>16 Q. Okay. So it was --</p> <p>17 A. Which is not -- which is not, I don't think, very</p> <p>18 controversial.</p> <p>19 Q. So that -- that market-based compensation was not</p> <p>20 factored into your damage calculations either; right?</p> <p>21 A. No, because I focused on supply costs. This I</p> <p>22 kind of take as being, these services are provided on an</p> <p>23 arm's length basis, marketplace compensation.</p> <p>24 Q. Okay. Let's talk about Mr. Coleman's correlation</p> <p style="text-align: right;">Page 105</p>

<p>1 their retail business.</p> <p>2 Q. Okay. Well, I guess --</p> <p>3 A. For example, a bunch of the Texas companies have</p> <p>4 retail supply businesses. We did a little bit on that,</p> <p>5 but not a major thing. But a bunch of the Texas</p> <p>6 companies had retail supply businesses that also had</p> <p>7 substantial other businesses.</p> <p>8 Q. I think I understand what you're saying. And you</p> <p>9 didn't work for the retail side of their businesses, you</p> <p>10 worked for the other side of their businesses?</p> <p>11 A. Or sometimes we would be hired on some kind of</p> <p>12 corporate strategy type engagement, which might be</p> <p>13 pretty broad.</p> <p>14 Q. Got it. Okay. I thank you for your time and</p> <p>15 your patience with me.</p> <p>16 MR. MATTHEWS: I'll pass the witness.</p> <p>17 A. Thank you.</p> <p>18 Q. Yes, sir.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21</p> <p>22 BY MR. WITTELS:</p> <p>23 Q. Mr. Adamson, I just really have one question for</p> <p>24 you. You were asked by counsel for XOOM about whether</p> <p style="text-align: right;">Page 138</p>	<p>1 XOOM or some broad question.</p> <p>2 Q. And the answer was?</p> <p>3 A. I believe he said yes, they were, they were both</p> <p>4 profitable. Both fixed rate and variable rate were</p> <p>5 profitable.</p> <p>6 Q. Okay. I have no further questions at this time.</p> <p>7 Thanks.</p> <p>8 MR. MATTHEWS: Thanks very much.</p> <p>9 A. Thank you.</p> <p>10 VIDEOGRAPHER: The time is 2:39, we are off</p> <p>11 the record.</p> <p>12 COURT REPORTER: And, Mr. Matthews, your</p> <p>13 order?</p> <p>14 MR. MATTHEWS: My order is an expedited</p> <p>15 transcript, just, I don't need any print copies.</p> <p>16 Electronic only. PDF exhibits.</p> <p>17 COURT REPORTER: Expedite by Friday?</p> <p>18 MR. MATTHEWS: Yes.</p> <p>19 (Whereupon, the deposition concluded at</p> <p>20 approximately 2:39 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">Page 140</p>
<p>1 the company was able to make any profits on its fixed</p> <p>2 rate customers; do you remember that question?</p> <p>3 A. Yeah. Not in exact wording, but I remember the</p> <p>4 question.</p> <p>5 Q. Yeah. And did you ask me to, whether you could</p> <p>6 go back and review your report when we had a break?</p> <p>7 A. Yeah, well -- yes, we were discussing the report.</p> <p>8 Q. And did you reread paragraph 57?</p> <p>9 A. Yes.</p> <p>10 Q. And does that answer the question of whether XOOM</p> <p>11 made money and was profitable on its fixed rate</p> <p>12 customers?</p> <p>13 MR. MATTHEWS: Objection. Leading.</p> <p>14 A. Well, I just -- it just reminded me there was</p> <p>15 a -- I had said that there was not a specific P&L, this</p> <p>16 was a reference in the report to deposition testimony</p> <p>17 from a XOOM witness about the profitability of this.</p> <p>18 Q. And what did your report find and state?</p> <p>19 A. I don't remember exactly how he worded it. I</p> <p>20 think there had been a, in the deposition there was a</p> <p>21 question about, it was around, I don't have the</p> <p>22 transcript in front of me, of course, of the deposition,</p> <p>23 but it was something around the line of were -- were a</p> <p>24 fixed rate -- were fixed rate customers profitable for</p> <p style="text-align: right;">Page 139</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 COMMONWEALTH OF MASSACHUSETTS</p> <p>4 SUFFOLK, ss.</p> <p>5</p> <p>6 I, Laurie Langer, Registered Professional Reporter</p> <p>7 and Notary Public in and for the Commonwealth of</p> <p>8 Massachusetts, do hereby certify that the witness whose</p> <p>9 deposition is hereinbefore set forth, was duly sworn by</p> <p>10 me and that such deposition is a true record of the</p> <p>11 testimony given by the witness.</p> <p>12</p> <p>13 I further certify that I am neither related to or</p> <p>14 employed by any of the parties in or counsel to this</p> <p>15 action, nor am I financially interested in the outcome</p> <p>16 of this action.</p> <p>17</p> <p>18 In witness whereof, I have hereunto set my hand and</p> <p>19 seal this 11th day of November, 2022.</p> <p>20</p> <p>21 </p> <p>22 NOTARY PUBLIC</p> <p>23 Commission Expires</p> <p>24 7/27/2023</p> <p style="text-align: right;">Page 141</p>

<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Our Assignment No: 5544017</p> <p>4 Case Caption: Mirkin vs. XOOM Energy</p> <p>5</p> <p>6 DECLARATION UNDER PENALTY OF PERJURY</p> <p>7 I declare under penalty of perjury that I have</p> <p>8 read the entire transcript of my Deposition taken in the</p> <p>9 captioned matter or the same has been read to me, and</p> <p>10 the same is true and accurate, save and except for</p> <p>11 changes and/or corrections, if any, as indicated by me</p> <p>12 on the DEPOSITION ERRATA SHEET hereof, with the</p> <p>13 understanding that I offer these changes as if still</p> <p>14 under oath.</p> <p>15 Signed on the _____ day of _____ 2022</p> <p>16</p> <p>17 _____</p> <p>18 SEABRON ADAMSON</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Job No. HOU5544017</p> <p style="text-align: right;">Page 142</p>	<p>1 Steven L. Wittels, Esq.</p> <p>2 slw@wittelslaw.com</p> <p>3 November 11, 2022</p> <p>4 RE: Mirkin, Susanna Et. Al. v. XOOM Energy, LLC And XOOM</p> <p>Energy New York, LLC</p> <p>5 11/8/2022, Seabron Adamson (#5544017)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 errata-tx@veritext.com.</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 144</p>
<p>1 DEPOSITION ERRATA SHEET</p> <p>Job No. HOU5544017</p> <p>2 Page No. ____ Line No. ____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. ____ Line No. ____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. ____ Line No. ____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. ____ Line No. ____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. ____ Line No. ____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. ____ Line No. ____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. ____ Line No. ____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 SEABRON ADAMSON</p> <p style="text-align: right;">Page 143</p>	